

SUMMARY MINUTES DURHAM BOARD OF ADJUSTMENT

September 26, 2000

This morning is a special morning in that the staff of the Planning Department, the Assistant City Attorney, the Deputy County Attorney and the Durham Board of Adjustment is honoring its past members with an 8:00 a.m. "thank you" breakfast, plaque and resolution presentations.

Chairman William Brian asked that everyone be seated for the presentations.

Present as honorees were Ms. Kate Fulkerson and Mr. Connie Watson.

Chairman Brian asked that Ms. Fulkerson stand as he read her Resolution into the record. He indicated the number of years she has served on the Board and thanked her for her hard work and dedication to this Board on behalf of the Board, staff, and citizens of the City and County of Durham.

Ms. Fulkerson said she has really enjoyed working with the staff and Board over the years and will miss the great friendships she has made since being a member here.

Chairman Brian then asked that Mr. Watson stand. He noted that Mr. Watson had served on the County Board of Adjustment prior to coming to the merged Board of Adjustment. He also noted that since coming to the merged Board of Adjustment in 1994. Mr. Watson received the Resolution of Appreciation along with a plaque thanking him for his hard work, dedication, commitment, service and outstanding patience on this Board.

Mr. Watson was accompanied by his lovely wife and asked her to stand. She was introduced to everyone as his "best friend". Mr. Watson thanked everyone for preparing such a wonderful send off for the past members. He wanted everyone to know how much he has enjoyed his tenure on the Board, both City and County, and indicated he has learned a great deal from all those persons he has had the great fortune to work with over the years.

There was applause and a standing ovation for them both. The Clerk then took pictures of them with their Resolutions. A copy of the picture will be sent to each of them once developed.

The Chairman then asked that they partake of the refreshments prepared in the back room area.

He then adjourned until 8:30.

The regular Board of Adjustment meeting was called to order at 8:35 a.m.

ROLL CALL

The Clerk called the roll and recorded attendance as follows:

MEMBERS SEATED

Lavonia Allison
William Brian, Chairman
James Edney
Louis Goetz
Corinne Mabry, Vice Chair
Selina Mack
David Smith
Kathy Wright-Moore

MEMBERS NOT SEATED

MEMBERS ABSENT

Kristen Rosselli

STAFF PRESENT

Dennis Doty, Planner
Betty Johnson, Planning Staff
Brenda Johnson, Clerk, Board of Adjustment
Steve Medlin, Planning Staff
Karen Sindelar, Deputy City Attorney
Sheila Stains-Ramp, Planning Supervisor
Helen Youngblood, Key Leader

SWEARING IN OF WITNESSES

The Chairman administered the oath to the following applicants and witnesses:

Helen Youngblood
Dennis Doty
Sam Brockwell
Jack Markham
Jarvis Martin
Christof Galli
Dan Jewell
Mike Hay
Randy Mundt
Trudy Mullins
Dale McKeel
Charles Pettiford
Della Michaux
Leon Meyers

Betty Johnson
Doug Griffin
Cliff Credle
Edward Costello
Vadia Yaqub
Linda Salguero
Elizabeth Harris
Philip Culpepper
Katherine Wilkerson
Stephanie Dalyrmple
Orlando Landron
Jerry Beth
Peter Anlyan
Lucy Lincoln

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Conflicts of Interest/Early Dismissals

The Chairman asked if there were any conflicts of interest with any of the Board members and any of the cases before the Board today. He also asked if any Board members had to leave early.

Mr. Smith noted that he has a conflict with Case B00-36 and asked that he not be seated on that case. At the time of his comments, there were only 7 Board members present. Mr. Smith indicated if he was needed to make a full Board, he would be seated on the case but preferred not to. Prior to the case being heard, Ms. Mabry arrived, making it possible for Mr. Smith to excuse himself from that case.

Ms. Allison indicated that she needed to leave at 12:30 for a previously arranged meeting.

HEARING AND DETERMINATION OF CASES

Ms. Johnson asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary. All Board members concurred.

Chairman Brian read the following statement into the record:

This Board is a quasi-judicial Board of record and as such, all testimony will be recorded. I'd like to ask at this point are there any members of this Board that would have any conflicts of interest with regard to the cases that are before us today? Are there any early dismissals at this time?

The proceedings of this Board will be governed by the zoning laws, as recorded.

As Chair of the Board of Adjustment, I'd like to explain the procedures used for Board hearings. The hearings are quasi-judicial. The process is similar to a court proceeding. First the staff will present an overview of the case then the applicant presents its evidence. The opponents, if there are any, will then present their evidence. The applicant may then present its rebuttal. Board members are asked to refrain from questions until each speaker has completed his or her presentation. All testimony is given under oath. In a few moments I will give the oath to all witnesses as a group. All witnesses are asked to sign the roster at the podium if you have not done so.

Testimony should consist of facts each witness knows directly, not hearsay. All witnesses should come to the podium and speak directly into the microphone so their testimony can be recorded on tape.

Written evidence must be presented to the Chair and a determination will be made about whether it should be accepted. Written evidence can be inspected by the other side. All evidence, written or oral, can be objected to.

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Witnesses are subject to cross-examination. Opposing representatives will have a chance to question witnesses after all witnesses for the other side have testified. If you wish to cross-examine you must raise your hand when I ask for other speakers in favor or against the application and I will recognize you. I would like to note that Board members may have visited each site under consideration as a part of their preparation for this meeting.

The Board will vote on each case after the presentation of all evidence, pro and con, concerning the case. The law requires that in order for an applicant's request to be granted 5 of the 7 voting Board members must approve the request.

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SEATED: Ms. Allison, Mr. Brian, Mr. Edney, Mr. Goetz, Ms. Mack, Mr. Smith, Ms. Wright-Moore

Case B00-14: County

A request by Rogers Grove Baptist Church for a Minor Special Use Permit for a place of worship as per Sections 4A.1.3.14, 7.28, 8.1.15, 9.4.1, 10.2.4, 12 and 13.1 of the Durham Zoning Ordinance. The property is located at 403 Baptist Road and zoned RD (F/J-B). Tax Map 969-1-5 and 19A.

Staff Presentation was made by: Betty Johnson

Persons Appearing in Support: Pastor Charles Pettiford, Doug Griffin, Architect

Persons Appearing in Opposition: None

Staff Recommendation was: Approval

Motion: Ms. Allison made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance Sections had been met.

Conditions:

1. That the existing sand filter system be upgraded through the permitting process from the State.
2. That no building permit shall be issued prior to the permitting of the sanitary sewer system by the State.
3. That the Falls Village Golf Course maintenance building parking lot be utilized for parking with the four additional spaces installed to satisfy the required parking.
4. That all required parking be in place at all times.
5. That a new well be installed for the expansion.

Seconded By: Ms. Wright-Moore

Vote: 7 to 0

Action: Granted

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SEATED: Ms. Allison, Mr. Brian, Mr. Edney, Mr. Goetz, Ms. Mack, Mr. Smith, Ms. Wright-Moore

Case B00-28: County

A request by SBA, Inc. for a Minor Special Use Permit for a 180' monopole telecommunications tower as per Sections 4A.1.3.20, 7.39 and 13.1 of the Durham Zoning Ordinance. The property is located at 3720 Brightwood Lane and zoned RD (F/J-B). Tax Map 706-3-4.

Staff Presentation was made by: Helen Youngblood

Persons Appearing in Support: Katherine Wilkerson, Attorney; Randy Mundt; Orlando Landron, Engineer and Appraiser; Philip Culpepper

Persons Appearing in Opposition: Dale McKeel

Staff Recommendation was: Approval

Motion: Mr. Smith made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance Sections had been met.

Conditions:

1. That all site plan corrections be made.
2. That a 180' unipole tower, shown in Exhibit F at the hearing, be the type telecommunications tower installed (with no extraneous antenna).

Seconded By: Ms. Wright-Moore

Vote: 7 to 0

Action: Granted

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SEATED: Ms. Allison, Mr. Brian, Mr. Edney, Mr. Goetz, Ms. Mack, Mr. Smith, Ms. Wright-Moore

Case B00-33: County

A request by Coulter Jewell Thames, PA for a Use Permit for a veterinary clinic as per Sections 4A.1.3.21, 7.42, 8.1.15, 9.4.1, 10.2.4, 12, and 13.1 of the Durham Zoning Ordinance. The property is located along the west side of Robbins Road, south of Wake Forest Highway and zoned RD (F/J-B). Tax Map 663-2-7A.

Staff Presentation was made by: Betty Johnson

Persons Appearing in Support: Dan Jewell, Architect; Stephanie Dalrymple, Applicant; Linda Salguero

Persons Appearing in Opposition: None

Staff Recommendation was: Approval

Motion: Ms. Allison made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance Sections had been met.

Conditions: That all site plan corrections be made.

Seconded By: Mr. Goetz

Vote: 7 to 0

Action: Granted

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SEATED: Ms. Allison, Mr. Brian, Mr. Edney, Mr. Goetz, Ms. Mack, Mr. Smith, Ms. Wright-Moore

Case B00-35: County

A request by Randy Mundt, c/o SBA, Inc. for a Minor Special Use Permit for a 195 foot telecommunications and associated equipment cabinets as per Sections 4A.1.3.20, 7.39, 8.1.15, 10.2.4 and 13.1 of the Durham Zoning Ordinance. The property is located at 3932 Bivins Road and zoned RD (M/LR-B). Tax Map 860-1-32, 32A.

Staff Presentation was made by: Helen Youngblood

Persons Appearing in Support: Mike Hay, property owner; Katherine Wilkerson, Attorney; Orlando Landron; Philip Culpepper

Persons Appearing in Opposition: Dale McKeel

Staff Recommendation was: Approval

Motion: Mr. Goetz made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance Sections had been met.

Conditions:

1. That all site plan corrections be made.
2. That the driveway be widened to 20 feet from Bivins Road to the tower.
3. That lot 11A and 11B be recombined if they are presently 2 lots.
4. That a unipole design be used for this site as shown in Exhibit F in accordance with the comments and concerns made by Mr. Dale McKeel, (with no extraneous antenna).

Seconded By: Ms. Allison

Vote: 7 to 0

Action: Granted

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SEATED: Ms. Allison, Mr. Brian, Mr. Edney, Mr. Goetz, Ms. Mack, Ms. Mabry, Ms. Wright-Moore

Case B00-36: City

A request by Durham Academy, Inc. for a Minor Special Use Permit for a private school for a maximum of 388 students as per Sections 4A.2.3.8, 4A.8.3.10, 8.1.15, 9.4.1, 10.2.4, 12 and 13.1 of the Durham Zoning Ordinance. The property is located along the east side of Ridge Road and zoned R-20, RM-8. Tax Map 460-1-1, 1A, 1B, 1C, 2, 3, 4, 7; 452-3-1B.

Staff Presentation was made by: Betty Johnson

Persons Appearing in Support: Jack Markham, Sam Brockwell, Edward Costello, Ted Master, Jarvis Martin, Real Estate Appraiser; Leon Meyers, builder; Peter Anlyan; Trudy Mullins; Della Michaux, parent of child at Durham Academy; Jerry Beil

Persons Appearing in Opposition: None

Staff Recommendation was: Approval

Motion: Mr. Edney made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance Sections had been met.

Conditions:

1. That a major site plan be approved by the Governing Body.
2. That a minimum of 25 foot undisturbed buffer from the corner of the new lower school along the Harris & Carr property line be maintained.
3. That an 8-foot permanent wood fence be installed on the Harris property line prior to construction, as noted on the site plan.
4. That there will never be a road connection from Durham Academy to either Tanglewood Drive or Rolling Hill Road.

Seconded By: Ms. Wright-Moore

Vote: 7 to 0

Action: Granted

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Note: This case was heard along with Case B00-33 but voted on separately.

SEATED: Ms. Allison, Mr. Brian, Mr. Edney, Mr. Goetz, Ms. Mack, Mr. Smith, Ms. Wright-Moore

Case B00-38: County

A request by Coulter Jewell Thames, PA for a Variance from the maximum 15% steep slope disturbance requirements from the Resource Protection Ordinance to allow a 20% steep slope disturbance for a veterinary clinic as per Sections 4A.1.3.21, 11.4.2, 11.8 and 16.1 of the Durham Zoning Ordinance. The property is located along the west side of Robbins Road, south of Wake Forest Highway and zoned RD (F/J-B). Tax Map 663-2-7A.

Staff Presentation was made by: Betty Johnson

Persons Appearing in Support: Dan Jewell, Architect; Stephanie Dalrymple, Applicant; Linda Salguero

Persons Appearing in Opposition: None

Staff Recommendation was: No staff recommendations given on Variance cases.

Motion: Mr. Goetz made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance Sections had been met.

Conditions: None

Seconded By: Ms. Allison

Vote: 7 to 0

Action: Granted

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SEATED: Ms. Allison, Mr. Brian, Mr. Edney, Mr. Goetz, Ms. Mack, Mr. Smith, Ms. Wright-Moore

Case B00-39: County

A request by Coulter Jewell Thames, PA for a Minor Special Use Permit for a day care facility as per Sections 4A.1.3.7, 7.13, 8.1.15, 9.4.1, 10.2.4, 12 and 13.1 of the Durham Zoning Ordinance. The property is located on the east side of Robbins Road, south of NC 98, west of Hocutt Road and zoned RD (F/J-B). Tax Map 663-2-8, 8A.

Staff Presentation was made by: Dennis Doty

Persons Appearing in Support: Dan Jewell, Architect

Persons Appearing in Opposition: None

Staff Recommendation was: Approval

Motion: Mr. Smith made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance Sections had been met.

Conditions:

1. That all day care traffic enter at the northern driveway and exit at the southern driveway and that directional signs be posted indicating such prior to the issuance of a Certificate of Occupancy.
2. That van service be provided at all times for the day care use.
3. That approval is subject to site plan corrections.

Seconded By: Ms. Wright-Moore

Vote: 7 to 0

Action: Granted

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SEATED: Mr. Brian, Mr. Edney, Mr. Goetz, Ms. Mabry, Ms. Mack, Mr. Smith, Ms. Wright-Moore

Case B00-40: County

A request by Coulter Jewell Thames, PA for a Minor Special Use Permit for a place of worship as per Sections 4A.1.3.14, 7.28, 8.1.15, 9.4.1, 10.2.4, 12 and 13.1 of the Durham Zoning Ordinance. The property is located on the east side of Robbins Road, south of NC 98, west of Hocutt Road and zoned RD (F/J-B). Tax Map 663-2-8, 8A.

Staff Presentation was made by: Dennis Doty

Persons Appearing in Support: Dan Jewell, Architect

Persons Appearing in Opposition: None

Staff Recommendation was: Approval

Motion: Ms. Mack made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance Sections had been met.

Conditions: None

Seconded By: Ms. Wright-Moore

Vote: 7 to 0

Action: Granted

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SEATED: Ms. Allison, Mr. Brian, Mr. Edney, Mr. Goetz, Ms. Mack, Mr. Smith, Ms. Wright-Moore

Case B00-42A: City

A request by Christof Galli and Nadia Yaqub for a Variance of 7.2 feet from the 9' minimum side yard/22' minimum total side yard setback requirement for an expansion to an existing single-family dwelling as per Sections 4A.5.6, 5, 19.7.1 and 16.1 of the Durham Zoning Ordinance. The property is located at 2413 W. Club Boulevard and zoned R-8. Tax Map 44-3-30.

Staff Presentation was made by: Betty Johnson

Persons Appearing in Support: Nadia Yaqub

Persons Appearing in Opposition: None

Staff Recommendation was: Approval

Motion: Mr. Goetz made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance Sections had been met.

Conditions: None

Seconded By: Ms. Wright-Moore

Vote: 7 to 0

Action: Granted

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SEATED: Ms. Allison, Mr. Brian, Mr. Edney, Mr. Goetz, Ms. Mack, Mr. Smith, Ms. Wright-Moore

Case B00-42B: City

A request by Christof Galli and Nadia Yaqub for a Minor Use Permit to expand an existing single-family dwelling as per Sections 4A.5, 9.4.1, 13.1 and 19.7 of the Durham Zoning Ordinance. The property is located at 2413 W. Club Boulevard and zoned R-8. Tax Map 44-3-30.

It is the staff's interpretation of the Ordinance, Section 19.7 that the expansion of this nonconforming single family dwelling on a nonconforming lot does not require a Minor Special Use Permit from the Board of Adjustment.

Action: The City Attorney's Office determined that based on the requirements of the Ordinance, this use permit is not needed for this proposal.

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Old Business

- The policy on absenteeism was discussed. It was noted by several Board members too often Board members leave during a meeting leaving the Board short handed. It is felt that the policy on absenteeism should be more strict. If a Board member attends a meeting and leave before noon, they should be counted absent for the entire meeting; unless the meeting adjourns prior to noon. It was also discussed that there would no longer be a category called "excused absence". If a person is absent, they are absent.

Further discussion revealed this was not adhered to, too often. This is to come back before the Board at the October meeting and a decision voted upon

- The denial order for Case B00-16 was brought before the Board. Mr. Goetz made a motion, seconded by Mr. Smith to approve the denial order as submitted. The motion passed unanimously.
- The denial order for Case B00-37 was brought before the Board. Ms. Mabry made a motion, seconded by Ms. Mack to approve the denial order as submitted. The motion passed unanimously.

Having no further business to come before the Board, the meeting was adjourned at approximately 3:10 p.m.

Respectfully submitted,

**Brenda Johnson, Clerk
Durham Board of Adjustment**